

LAW OFFICE OF FRED SHAHROOZ SCAMPATO, PC  
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*Attorney for defendant/third party plaintiff*  
*JESUS J. PALMERONI*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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N.V.E., INC., : Civil Action No.:  
2:06-CV-05455 (HAA) (ES)  
Plaintiff, :  
- v. - : **MOTION DATE:**  
March 9, 2011  
JESUS J. PALMERONI, et als., :  
Defendants. : **ORAL ARUGMENT REQUESTED**  
-----X  
JESUS J. PALMERONI, :  
Third party plaintiff, :  
- v. - : **NOTICE OF MOTION**  
**PURSUANT TO FRCP**  
ROBERT OCCHIFINTO, et al. : **37(a) (b) FOR SANCTIONS**  
**FOR THE DESTRUCTION OF**  
Third party defendant. : **DOCUMENTS**  
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**PLEASE TAKE NOTICE** that on March 9, 2011, at 1:00 p.m. in the afternoon of that day or as soon thereafter as counsel may be heard, the undersigned, counsel for Jesus Joseph Palmerino shall apply to the United States District Court, District of New Jersey, Martin Luther King, Jr. Federal Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey for an Order:

- (1) excluding all evidence prior to 2005 regarding plaintiff's proposed claims regarding Smart World;
- (2) permitting the jury to draw an adverse inference respecting NVE's non-production or destruction as evidence that NVE did so out of a well-founded fear that the contents would harm it;
- (3) permitting the jury to draw an adverse inference respecting Plaintiff's non-production or destruction of the following categories of documents: (a) the MACS accounting and financial system, (b) NVE's entire Smart World file from years 2000 through 2004; (c) all intra office emails; (d) all emails between NVE and its brokers, distributors and customers; (e) all correspondence between NVE and its brokers, distributors and customers; (f) all destroyed sales data relevant to determine defendant, Palmeroni's commissions during 2000, 2001, 2002 and 2005, (g) missing personnel files, (h) all customer records, (i) commission and brokerage files relating to NVE brokers Wayne Dail, Harold Miller and Kris Surjack;
- (4) NVE provide defendant, Palmeroni with a full accounting of all categories of destroyed and preserved files;

- (5) NVE provide defendant, Palmeroni with its Litigation Hold Letters;
- (6) Money sanctions for the destruction of documents;
- (7) and payment of attorney fees for the necessity of filing the within motion and
- (8) granting such other and further relief as this Court may deem appropriate.

**PLEASE TAKE NOTICE** that movant relies upon the accompanying Memorandum of Law, and Declaration of Joseph Palmeroni, Declaration of Counsel and Exhibits annexed thereto. A proposed form of Order is submitted herewith.

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Dated: February 14, 2011

By: /s/ Fred Shahrooz Scampato  
Fred Shahrooz Scampato

